

875
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-499-DB-2015 (O/M)
Date of decision : 3.10.2018

Harender Pal and others Appellants

Versus

State of Haryana and another Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vinod Ghai, Senior Advocate, with,
Mr. Keshav Partap Singh, Advocate,
for appellants.

Mr. Vivek Saini, DAG Haryana.

Mr. S.K. Garg Narwana, Senior Advocate, with,
Mr. Naveen Gupta, Advocate,
for complainant-respondent No. 2.

:-

:-

KULDIP SINGH, J.

This appeal is directed against judgment of conviction dated 17.3.2015 and order of sentence dated 18.3.2015, passed by learned Additional Sessions Judge-I, Palwal, vide which accused-appellants were convicted and sentenced as under :-

<u>Name of convicts</u>	<u>Offence</u>	<u>Sentence awarded</u>
Harender Pal, Ravinder, Prithi, Bobby alias Pardeep, Rinku, Birpal, Yogender, Bhola	Section 148 IPC	Rigorous Imprisonment for a period of 1 year each and to pay fine of Rs. 1,000/- each and in default of payment of fine, to undergo further imprisonment for 15 days.

<u>Name of convicts</u>	<u>Offence</u>	<u>Sentence awarded</u>
Harender Pal, Ravinder, Prithi, Bobby alias Pardeep, Rinku, Birpal, Yogender, Bhola	Section 307 IPC read with Section 149 IPC	Rigorous Imprisonment for a period of 5 years each and to pay fine of Rs. 5,000/- each and in default of payment of fine, to undergo further imprisonment for 3 months.
Harender Pal, Ravinder, Prithi, Bobby alias Pardeep, Rinku, Birpal, Yogender, Bhola	Section 302 IPC read with Section 149 IPC	Rigorous Imprisonment for life each and to pay fine of Rs. 25,000/- each and in default of payment of fine, to undergo further imprisonment for 1 year.
Harender Pal, Ravinder, Prithi, Bobby alias Pardeep, Rinku, Birpal, Yogender, Bhola	Section 506 IPC	Rigorous Imprisonment for a period of 6 months each and to pay fine of Rs. 1,000/- each and in default of payment of fine, to undergo further imprisonment for 15 days.

All the sentences were directed to run concurrently.

As per first version put forth by Mahavir (complainant) son of Puran Singh in his statement made on 31.3.2009, at 1:10 hrs, before SI Raghubir Singh, Incharge, PP Hathin Gate, Palwal, is that on 30.3.2009, at 10:00 pm, he alongwith his brother Rajender and cousin Rakesh son of Mohan Lal, Mukhtiyar son of Gurdayal and Neeraj son of Rajender were talking while sitting in Bethak (drawing room). At that time, a Tavera car of black colour bearing No. 0003 came there, in which Harenderpal son of Bharat Pal, Ravinder and Prithi sons of Raghuraj Singh, (accused), residents of Kanungo Mohalla, Palwal, were present. 3 motorcycles, on which Bobby alias Pardeep son of Krishan Pal Singh, Rinku son of Prithi, Yoginder alias Bhindi son of Bhanupartap, Bhola son of Deshpal, residents of Kanungo Mohalla, also came out there. Firstly, persons sitting in Tavera car came

and said that they will not leave the complainant party and will kill them. At the same time, persons on motorcycles also came and started non stop firing by the weapons having in their hands. One bullet hit on the right side of the waist of Neeraj. They all saved their lives by hiding themselves in the car and here and there. According to Mahavir (complainant), these persons fired gunshots on Neeraj and them with an intention to kill them. All accused were shouting that they will not leave the complainant alive. After that, they fled away. They took Neeraj to Government Hospital, Palwal, for treatment, from where he was referred to B.K. Hospital, Faridabad, by the doctor. However, since Neeraj was serious, he was taken to Escorts Fortis Hospital, Faridabad.

As per police proceedings, a telephonic message was received by police on 30.3.2009 that Neeraj son of Rajender, resident of Kanungo Mohalla, Palwal, has been admitted in the hospital due to injuries received by him in a quarrel. On this, ASI Raghubir Singh alongwith police officials came to Government Hospital, Palwal, from where he came to know that injured has been referred to B.K. Hospital, Faridabad. Therefore, he alongwith fellow police officials reached B.K. Hospital, Faridabad, from where they came to know that injured has been admitted in Escorts Fortis Hospital, Faridabad. Thereafter, he alongwith fellow police officials reached Escorts Hospital, where doctor had declared the injured unfit for make statement. Later on, Mahavir Singh son of Puran came present and got recorded his statement. The police also collected MLR of injured Neeraj and on the basis of statement of complainant and MLR, formal FIR No.114 (Ex.PW6/A) was registered at 2:10 AM on 31.3.2009 was registered under Sections 148, 149, 307, 506 IPC and under Section 25 of Arms Act, 1959. The endorsement was completed on 31.3.2009 at 1:00 AM.

In the meanwhile, on the same night, Neeraj succumbed to injuries at 2:45 AM on 31.3.2009. Offence under Section 302 IPC was added. The doctor sent the intimation (Ex.PB) to the police, on which the police arrived and got the post mortem of dead body conducted. The inquest report was also prepared. The police also visited the spot and prepared the site plan (Ex.PS). One 12 bore fired cartridge and one 315 bore missed cartridge were recovered from the spot. From the scene of the crime, where complainant party was sitting i.e. inside Nohra, some flesh, one bone and blood stained mud/earth were picked up.

However, during the investigation, the police started suspecting the version put-forth by Mahavir Singh and did not take any action against accused named by him. Accordingly, Mahavir Singh filed a criminal complaint before the Court of learned Sub Divisional Judicial Magistrate, Palwal, in which he reiterated the version given in the original complaint. However, he also stated the motive in the said complaint, revealing the fact that Kamini Kaushal, sister of Harender Pal (accused), had lost elections of Nagar Parishad, Palwal, against Sukhbir Singh alias Sukhi, brother of Mahavir Singh (complainant) in Ward No. 23, in the year 2005. Sukhbir Singh alias Sukhi was elected and Kamini Kaushal lost the elections. Accused Harender Pal is President of District Congress and a wealthy and a known person. By taking advantage of his political position and connections, he is trying to involve the applicant and his family members in false and unnecessary cases. The member of applicant's family are always in danger of their lives from accused. Accused Harender Pal has already trapped complainant's brother Anil son of Rajender and complainant's uncle's son Satbir son of Mohan Lal in a false case under Sections 363, 364, 376 IPC by joining hands with the police and are ready to

kill the remaining members of family. The complainant also stated that on 3.4.2009, many persons met SSP, Palwal, at his residence demanding arrest of accused. The SHO City Palwal came and assured them that they have caught two accused and the remaining will be arrested soon and sought one week for the same. However, after one week, none of the accused were presented in Court after arresting. The complainant also made complaints to higher officers and ultimately filed a criminal complaint before the learned Sub Divisional Judicial Magistrate, Palwal, on 22.4.2009. It is the said complaint, which was tried, in which conviction of accused was recorded by learned Additional Sessions Judge-I, Palwal. In said complaint, all eight appellants were named.

After recording the preliminary evidence, the learned Magistrate, vide order dated 22.4.2010, summoned all accused to face trial for offences under Sections 148, 149, 307, 302, 506 IPC read with Section 149 IPC and under Section 25 of Arms Act, 1959. Thereafter, the case was committed to the Court of Sessions. All accused were chargesheeted under Sections 302, 307, 148 read with Section 149, 506 IPC, to which they pleaded not guilty.

In support of its case, prosecution examined PW1 Dr. D.S. Rathi, Medical Officer, B.K. Hospital, Faridabad, PW2 Mahavir (complainant), PW3 Rakesh (eye witness) son of Mohan Lal, PW4 Mukhtiar (eye witness) son of Gurdial Singh, PW5 Dr. Prabal Roy, Surgeon, Asian Hospital, Faridabad, PW6 ASI Ram Chand P.S. City Palwal, PW7 Dr. Sanjay Kumar, Medical Officer, PHC, Mindkola, and thereafter, the prosecution closed its evidence.

In the statement recorded under Section 313 Cr.P.C., accused denied as incorrect the evidence led against them and pleaded that they have

been falsely implicated. All the accused took almost same plea which is reproduced as under :-

'The complainant is the real brother of Sukhbir alias Sukhi. The said Sukhi and his nephew Anil were accused in a case under Section 376 IPC in which the allegations pertained to the rape of Chandani d/o Manoj who is elder brother of Virpal Singh.

The accused through their family members were putting pressure for out of court settlement and since the family of the victim was not willing to do. So, Sukhi (accused) and his relatives planned to implicate us in this false case so as to force us into the compromise.

Mahavir complainant in the present case fabricated the entire version of so called occurrence on 30.3.2009 and Neeraj was caused injuries by them to build a false case against us and on the statement of Mahavir FIR No. 114 date 31.3.2009 under Sections 148, 149, 307, 120-B, 302, 506 read with Section 24, 54, 59 Arms Act was got registered at Police Station City Palwal. When the police investigated the case it was discovered that Neeraj had been caused gunshot injuries by the complainant party itself but with the intention of causing him injuries to implicate us in a false case but Neeraj expired. Based on the investigation conducted by the police we were found innocent and rather proceedings against the complainant were implicated. He and his accomplices are now facing trial as and are also accused in the same FIR, proceedings of which are also pending before this Hon'ble Court in the case titled as State Vs. Ravinder alias Rabbo and others. The criminal complaint against us was only to harass us and to implicate us in the false case.'

In defence, accused examined DW1 Sanjeev Kalra, Criminal Ahlmad, DW2 Mahavir Singh, retired Inspector, DW3 Jagat Singh retired Superintendent of Police and closed the defence evidence.

The learned Additional Sessions Judge-I, Palwal, after going

through the evidence and hearing both parties, convicted and sentenced the accused, as aforesaid.

We have heard the learned senior counsel for appellants, learned senior counsel for complainant-respondent No. 2 and have also carefully gone through the lower Court record/file.

At the very outset, it is to be noted that after the investigation, the police found that present appellants are innocent and that the complainant party has itself committed the crime. Therefore, Mahavir and some others were challaned by police. This Court has been informed that said trial ended in the acquittal of said accused Mahavir Singh and others also, regarding which State has filed a separate appeal, which is still at admission stage.

The Supreme Court, vide order dated 7.8.2015, directed this Court to expeditiously dispose of the appeal i.e. CRA-D-499-DB-2015, pending before it.

First of all, we will proceed to examine the medical evidence available on record.

Admittedly, injured was first of all taken to PHC Mindkola, where he was attended by Dr. Sanjay Kumar, Medical Officer (PW7). According to doctor, patient was brought at 10:30 PM. He intimated the police. He found following injuries on the person of deceased :-

1. Lacerated puncture wound over right side spine below shoulder posteriorly of the size 8 x 2.5 cm with small precised wound over right side spine. Bleeding present. Multiple splinters marks were present around the wound. Tatoo was present in soft tissue of wound marigins were inverted. X-ray chest, surgeon opinion and opinion of the

ballestic expert was recommended.'

PW5 Dr. Prabal Roy, Surgeon, Asian Hospital, stated that injured was brought to Escorts Fortis Hospital, Faridabad, on 30.3.2009, with the alleged history of firearm injury sustained at about 10:00 pm. On examination, patient was in hypovolumic shock and had right sided chest wounds. Patient was taken for emergency surgery wherein massive hemothorax and multiple lung lacerations and hilar injuries were noted. Lung injury was repaired and patient received 23 units of blood products over the next two hours. However, patient could not be revived in spite of all best efforts and was declared dead at 2:45 am on 31.3.2009.

In the cross examination, he stated that as per the record, margins were black and inverted at the site of wound. As per record, it was a large laceration having size 8 x 2.5 cm. The firearm used in relation to injured was in close range.

Further PW1 Dr. D.S. Rathi, Medical Officer, B.K. Hospital, Faridabad, who conducted post mortem, testified that he was a member of the board which conducted post mortem on the dead body of Neeraj. The following injuries were found on the dead body :-

'Injuries

1. There was a well stitched wound of size 11 inch was present over the right anterior axillary line to inferior angle of right scapula. Another incised (surgical) wound 1.5x2 inch was present just below the inferior angle of scapula, 4 cm below the stitch line as mentioned above.
2. Twelve (12) punctured wound with inward margins blackening tatooing was present size 0.7 x 1.5 cm present in area of right back 6 x 9 inch area. Some are present above the stitched line and some are present below the stitched line.

Internal examination

Cranium and Spine – healthy, pale

Thorax : right lower rib cage was having multiple fractures, right pleural cavity contain about 1 litre of blood and laceration on posterior surface, left pleural cavity contain about 400 cc of blood, right lung was collapse, pale with multiple laceration, left lung was collapse and pale, larynx and trachea pale, major vessels in the mediastinum were lacerated, heart was empty and pale, eight (8) pellets were recovered from lungs, pleural cavity, mediastinum and liver. Packed and seal in a vial and handed over to police.'

As per opinion of doctor, the cause of death in this case was due to injury to vital organs lungs, liver and major vessels leading to haemorrhage and shock.

In cross examination, he stated that there was blackening of the punctured wounds in the area of right back. Some of the pellets were present in upper portion of the back and some were present in lower portion of the back. He does not remember whether pellets were skin deep, muscle deep, bone deep. There is no such mention in the post mortem. The doctor has clarified that eight pellets were recovered from lungs, pleural cavity, mediastinum and liver. These were handed over to police.

Now, this Court is to examine as to what could be the distance from which one 12 bore shot, which hit Neeraj, was fired, considering the nature of injuries described by doctors.

The distance of firearm, as per Modi's Medical Jurisprudence and Toxicology, is reproduced as under :-

'Distance of the Firearm

If a firearm is discharged very close to the body or in actual contact, subcutaneous tissues over an area of two or three inches around the wound of entrance are lacerated and the surrounding skin is usually scorched and blackened by smoke and tattooed

with unburnt grains of gunpowder or smokeless propellant power. The adjacent hairs are singed, and the clothes covering the part are burnt by the flame. If the powder is smokeless, there may be a greyish or white deposit on the skin around the wound. If the area is photographed by infrared light, a smoke halo round the wound may be clearly noticed. Blackening is found, if a firearm like a shotgun is discharged from a distance of not more than three feet and a revolver or pistol discharged within about two feet. In the absence of power residue, no distinction can be made between one distant shot and another, as far as distance is concerned. Scorching in the case of the latter firearms is observed within a few inches, while some evidence of scorching in the case of shotguns may be found even at one to three feet. Moreover, these signs may be absent when the weapon is pressed tightly against the skin of the body, as the gases of the explosion and the flame smoke and particles of gunpowder will all follow the track to the bullet in the body. Wetting of the skin or clothes by rain reduces the scorching range. Blackening is not affected by wet surface although it can easily be removed by a wet cloth. Blackening with a high power rifle can occur up to about one foot. Usually, if there are unburnt powder grains, the indication is that the shot was fired from a revolver or a pistol and shorter the barrel of the weapon, used the greater will be tendency to the presence of unburnt of slightly burnt powder grains.'

Now, we come to FSL report (Ex.D4), it shows that in the viscera of deceased, ethyl alcohol in strength of 40.25 mg% was found. Regarding the flesh and bone, the FSL report finds that no opinion could be given regarding species of origin and sex. However, the blood and flesh was found to be of human. The group was found inconclusive. As per another report of FSL dated 27.10.2009, on examination of one .315" misfired cartridge, one metallic head of 12 bore fired cartridge case and one country made pistol, stated to have been recovered from accused Ravinder

alias Raghu, belonging to complainant party, who was challaned by police in the State case. It was found that country made pistol (W/1) had been fired through. The percussion cap of the metallic head of 12 bore fired cartridge case marked C/1 was found perforated and no definite opinion could be formed regarding linkage of C/1 with country made pistol W/1. The misfired cartridge marked MC/1 was found to be a .315" misfired cartridge.

Now, the site plan (Ex.PS), prepared by police, is also required to be examined. As per site plan (Ex.PS), prepared by police, a 12 bore used cartridge and one 315 bore missed cartridge were found, which is in the street in front of courtyard, outside Nohra, where deceased alongwith complainant party was sitting. At nearby place in the street, blood stained mud was picked up. As per site plan, deceased Neeraj was sitting with Mahavir, Ravinder, Rakesh and Mukhtiyar at point 'D' which is inside Nohra. From point 'E' which is between point 'A' and point 'D' inside Nohra, one piece of bone and some flesh were recovered. As per police, distance between mark 'A' to 'B' is 1 ½ feet, between mark 'A' to 'C' is 2 feet, between mark 'A' to 'E' is 12 feet, between mark 'A' to 'D' where cot is lying is 17 feet, width of street is 21 feet and distance between main gate to mark 'A' is 5 feet. The site plan shows that as per police inspection, the point from where the shots were fired, point 'B' and 'C' in the street, distance is around 17 feet. The place where piece of bone and some flesh were found is about 12 feet. The street itself is 21 feet and distance between gate to mark 'A' is 5 feet. As per the version of complainant, accused while coming in the street, had fired at them multiple times.

Now, coming to the ocular testimony, complainant Mahavir Singh (PW2) has reiterated his story, as stated in the complaint. He stated

about elections of Municipality in the year 2005 between his brother Sukhbir alias Sukhi and Smt. Kamini Kaushal, sister of accused Harender Pal, in which Kamini Kaushal lost the elections. He further state that five persons including Sukhbir alias Sukhi and his nephew Anil were implicated in a false case under Section 376 IPC, in which they were acquitted by the Court and talking about crime, he stated that a Tavera car bearing No. 0003 came there. The said vehicle was of black colour. Harender Pal, Ravinder, Prithi came in said car. Other accused Bobby, Bhola, Yogender, Birpal and Rinku came on 2-3 motorcycles. Harender Pal, Ravinder and Prithi after alighting from the car, stated that complainant party should not be permitted to go alive. They were armed with Kattas. Bobby, Yogender, Bhola, Rinku and Birpal resorted to incriminate firing from these Kattas. They took shelter behind the walls and cots. One of the shots hit on back side of shoulder of Neeraj on the right side. Neeraj fell down. They remained behind the walls etc. The assailants escaped from there in Tavera car and motorcycles. The injured was then taken to General Hosptial, from where he was referred to B.K. Hospital, Faridabad. However, keeping in view his critical condition, they took him to Escorts Fortis Hospital, Faridabad. At about 2:40 AM on the next day, Neeraj died. He further stated that police did not take any action against accused persons because of political influence of Harender Pal (accused). Then, he met the SP also. The SP told that two persons had been arrested. On inquiry, they came to know that nobody had been arrested. Ultimately, they filed a criminal complaint in the Court.

The cross examination of Mahavir Singh (complainant) shows that on the day of incident, Sukhbir alias Sukhi was in Bhondsi jail in a case under Section 376 IPC. Kamini Kaushal had not filed any election petition. Furthermore, there was no litigation between Sukhbir alias Sukhi and

Kamini Kaushal after the Municipality Elections. Regarding the rape case registered against Sukhbir alias Sukhi and others, he stated that Harender Pal was not a witness in said case. Sukhbir alias Sukhi was arrested some four years before the elections in this case. He further stated that they had made efforts for convening panchayat in that case for settlement, but opposite party did not come in panchayat. Sukhbir alias Sukhi and his family members felt a lot of humiliation and disgrace because of said case filed under Section 376 IPC against him. He further stated that no appeal has been filed against acquittal of Sukhbir alias Sukhi in Section 376 IPC, as per his knowledge. He admitted that in the investigation, police found accused persons to be innocent. Rather, he, Ravinder alias Rabbo (now deceased) Dalip and Sonu etc. were made accused in said case and that trial is still pending in the Court. He admitted that on the basis of statement of eye witnesses of said case, an application under Section 319 Cr.P.C. to summon accused in present criminal complaint was filed by them, which was dismissed in said case. Regarding the location, Mahavir Singh stated that there are 12 to 14 feet metalled road abutting their Nohra. The gate is 5 feet in width and is having a height of about 3 feet. The verandah is 2 feet above the ground level. The height of the wall adjoining the verandah is about 10 feet. The verandah is approximately 40 feet x 40 feet and same is enclosed by walls. They were sitting in verandah since 9:00 pm and occurrence took place at 10:00 PM. The houses of accused are at a distance of five killas from place of occurrence. The firing lasted for 2-3 minutes and in this process, only 2-3 shots were fired. One empty cartridge was found lying near the place where Neeraj had fallen down and rest of fire shots did not hit any tree or wall of chopal. The tree should be at a distance of 6 feet from the main gate of chopal. The shots were fired from

the road itself near the gate.

This statement will establish the scene of crime at the time when shots were fired. Regarding the said room where the occurrence took place, he stated that after the incident, room was demolished and fresh construction has been raised there, which was inaugurated by Karan Singh Dalal, Ex Minister of Haryana. The expenses were borne by the Government. The stone was laid in the name of Karan Singh Dalal, who was in Congress party at that time. Karan Singh Dalal was a Minister in those days, whereas Harender Pal Singh was a sitting District Congress President. He also clarified that Rabbo was absconder in those days in a case filed against him under Section 376 IPC. He admitted that another case under Section 307 IPC is pending between the parties. He denied the defence version put forth.

Other two eye witnesses, namely, Rakesh (PW3) as well as Mukhtiyar (PW4) made more or less same statements. They stated that 2-3 shots were fired. Rakesh (PW3) claimed that Neeraj was at a distance of 8-10 feet from the road abutting the chopal. Both parties made efforts through panchyats for settling the dispute between the parties in case under Section 376 IPC, but efforts proved futile. He admitted that Neeraj also accompanied them to Bhondsi jail on 29.3.2009 for meeting Sukhbir alias Sukhi. They also admitted that shots did not hit the trees or backside of wall.

PW6 ASI Ram Chand stated that in this case, after the investigation, challan was presented against Ravinder alias Rabbo son of Raghunath Singh, Dalip Singh son of Dharam Singh, Yogesh son of Rajender Singh and Sonu son of Kalu Khan. Supplementary challan was filed in this case against Mahavir (present complainant) and also against Sukhbir alias Sukhi under Sections 302, 307, 506, 148, 149 IPC and under

Section 25 of Arms Act, 1959.

In defence, accused got proved copy of FIR No. 121 dated 24.3.2008, under Sections 148, 149, 323, 307, 452, 506 IPC and under Section 25 of Arms Act, registered at Police Station City Palwal, in which cancellation report was presented.

DW2 Mahavir Singh, retired Inspector, stated that he had investigated the case and after verifying the facts and spot inspection, he came to conclusion that said accused named in FIR by complainant Mahavir Singh, were found innocent. He stated that he presented report under Section 173 Cr.P.C. on 2.9.2009, giving reasons and investigations on the basis of which accused named in FIR were not challaned. Rather, aforesaid persons, namely, Ravinder alias Rabbo and others were challaned by him.

In cross examination, he clarified that no blood was lifted from the tubewell where alleged occurrence as per defence version took place, nor any empty, pellet or wad was recovered there, nor any gunny bag was collected from said tubewell.

DW3 Jagat Singh, retired Superintendent of Police, states about a certified copy of affidavit Ex.DX, which has been filed in Supreme Court, regarding affidavit which is immaterial in present case.

First of all, we will examine whether there is motive on the part of accused to commit the crime.

The motive, as alleged, in the case is that Kamini Kaushal, sister of Harender Pal Singh, had lost elections to Sukhbir Singh alias Sukhi, brother of Mahavir Singh in the year 2005. The present occurrence took place on 30.3.2009 i.e. after 4 years. No election litigation took place between Kamini Kaushal and Sukhbir Singh alias Sukhi. Therefor, it is unlikely that after 4 years, accused will have motive to commit said crime.

In any case, it is proved that parties were at loggerheads. A case under Section 376 IPC was registered against Sukhvir Singh alias Sukhi and others, for which present accused are being blamed. The said case was pending trial. Undoubtedly, a case under Section 307 IPC was also got registered by accused party against complainant party, in which cancellation report was presented.

The learned senior counsel for complainant has informed the Court that on the complaint filed by complainant, accused were convicted and sentenced. Therefore, it is clear that parties were not having good relations. However, motive is always double edged weapon. It could be motive for the complainant party to settle scores with accused party and implicate them in a case. On the other hand, it could be motive on the part of accused party to settle scores with complainant party and implicate them in a case. Therefore, this Court is to examine which of the party is at fault.

Now, if the nature of injuries, reproduced above, are examined, it goes to show that one shot of 12 bore was fired, which was fired from close range. Since blackening was there, the distance, as per the Modi's Medical Jurisprudence and Toxicology, could be 2-3 feet. The fact that pellets entered the body and hit various parts goes to show that when the shot was fired, probably the pellets got deflected after hitting scapula causing fatal injuries to various vital organs. In any case, it was a shot fired from close range.

Now, when it is corroborated by version given by complainant in the complaint, as well as in the FIR and the statements made in Court that accused allegedly fired indiscriminately, which according to claim of complainant and eye witnesses, were 2-3 shots. The shots were fired while

standing in the street. The distance between street and place where the complainant party was sitting on cot is about 12 feet and where Neeraj was hit was about 17 feet.

We are of the firm view that if 12 bore shot is fired even from a distance of 10 feet, present injury is unlikely. With the distance, 12 bore pellets spread and cover more wide area. Therefore, it will not concentrate on a particular point and will not cause blackening. 315 bore missed cartridge recovered from street did not match with any weapon. Further, according to complainant and eye witnesses, 2-3 shots were fired. Even assuming that modified version given by complainant party in Court is correct, if all the pellets hit deceased, then other shots must have hit rear wall, height of which is about 10 feet. It is not claimed either by the complainant or by eye witnesses that any mark was found on the back wall or on the trees, nor any pellet spread anywhere and hit any part of trees or building behind. Therefore, the medical evidence does not corroborate the ocular version given by the complainant and eye witnesses.

Further, police found some flesh and a piece of bone from the place of crime. Neither flesh was found to be of deceased, nor in the post mortem report it was reported that some part of flesh or the bone from the dead body was found missing.

The learned senior counsel for appellants has argued that there is delay in lodging the FIR.

We are of the firm view that there is no delay in lodging the FIR. The occurrence took place on 30.3.2009 at 10:00 pm. Thereafter, the complainant party took the injured to various hospitals. It was only at 1:10 PM that the police reached hospital and promptly recorded statement of complainant. Thereafter, the police machinery was set in motion and the

investigating officer after completing formalities sent the endorsement to police station and thereafter formal FIR was reduced into writing.

The learned counsel for complainant has vehemently argued that in this case, the investigation by police was tainted. The police did not collect the material evidence as accused party was influential. However, at the same time, it is not denied that accused party was also well connected with Karan Singh Dalal, who also belongs to same party. Therefore, apparently both parties are well connected. The police inspected the spot and after verification, version given by complainant was found to be incorrect. Even if police investigation is ignored by this Court, even then it is found that ocular version given by complainant and eye witnesses in the FIR and statements given by complainant and eye witnesses in the Court are not supported by medical evidence. Therefore, the police was justified in coming to conclusion that crime as alleged did not take place.

According to complainant and eye witnesses, at least five of accused were armed with country made pistol, whereas Harender Pal, Ravinder and Prithi, who came on a Tavera Car, were not armed with any firearm. Therefore, if all 5 other accused started indiscriminately firing and even if they fired one shot each, it would have hit the trees, wall or any portion of building behind the place where the complainant was hiding himself during firing. Therefore, we fully agree with the investigation by police that crime was not committed by accused party and that version of complainant party was rightly discarded by the police during investigation.

The learned senior counsel for complainant has vehemently argued that Neeraj was a young man of 25 years. It is highly unlikely, as claimed by defence counsel that complainant party will injure Neeraj to make out a case under Section 302 IPC. It has been further pointed out that,

in case of self infliction injuries, injuries on the vital parts is normally not possible.

We fully agree with the contention of learned senior counsel for complainant that in case of self inflicted injury, in most of the cases it is on non vital parts and certainly not on vital parts like Scapula. Therefore, complainant party will not try to make a young boy of 25 years as scapegoat.

Now, further question would arise as to how occurrence had taken place.

This Court is not to investigate and to find out that if accused party had not committed crime, then who committed crime. It was job of police. The complainant gave one definite version which is not supported by medical evidence. Therefore, this Court has come to definite conclusion that accused had not committed crime, as alleged by complainant party. The bad blood between parties could be reason for complainant party to find an opportunity to settle scores with accused party by naming as many as 8 persons for one gunshot injury. The possibility of crime having taken place in a a different manner and complainant getting an opportunity to settle the scores with accused party is there. This Court will not comment as to who else is involved in crime since at the police instance, complainant party was challaned and acquitted and appeal filed by State is to be separately decided.

In view of foregoing discussion, we come to conclusion that prosecution case is not proved against accused-appellants beyond all reasonable doubt. The trial Court erred in recording finding that accused are involved in crime. Accordingly, we make the following order :-

- (1) CRA-D-499-DB-2015 is allowed. All accused are acquitted of charges framed against them.
- (2) Appellant No. 1 Harender Pal son of Bharat Lal, appellant No. 2 Ravinder son of Raghuraj Singh, and appellant No. 3 Prithi son of

Raghuraj Singh, who are on bail, their bail bonds and surety bonds stand discharged. Fine, if any paid by appellants No. 1 to 3, be refunded to them.

(3) Appellant No. 4 Bobby alias Pardeep son of Krishan Pal Singh, appellant No. 5 Rinku son of Prithi, appellant No. 6 Birpal son of Kushal Pal, appellant No. 7 Yogender alias Bhindi son of Bhanu Pratap and appellant No. 8 Bhola son of Deshpal, who are in custody, be released forthwith, if not required in any other case. Fine, if any paid by appellants No. 4 to 8, be refunded to them.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

3.10.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No